IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.3261/1995
(Superintending Geologist & Ors. V. Soma Ram & Anr.)

Date of Judgment : 10.08.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mrs. R.R. Kanwar, for the State.
Mr. Sanjeet Purohit, for workman-respondent.

In the present writ petition, the Mines & Geology Department, Jodhpur is challenging the award dated 22.9.1994 passed by Judge, Industrial Dispute Tribunal & Labour Court, Jodhpur whereby the Tribunal while passing the award in favour of the respondent-workman set aside the order of termination of services of respondent-workman and directed that he shall be taken back on duty.

According to the facts narrated in the writ petition, the workman-respondent No.1 raised an industrial dispute before the Dy. Labour Commissioner, Pali for reconciliation. After the failure of the reconciliation proceedings, the matter was referred by

the appropriate Government to the Judge, Industrial Disputes Tribunal & Labour Court, Jodhpur for adjudication with regard to termination of the services of the workman in violation of the Industrial Disputes Act.

The Judge, Industrial Disputes Tribunal & Labour Court after considering all aspects of the matter including the service tenure of the workman found that the workman was appointed in the month of July, 1986 on daily-rate basis as chowkidar and he continued upto September, 1988 and while relying upon the statement of Shri N.S. Kawadia in which he has admitted that workman-respondent worked in the Department for more than 332 days, held that services of workman were retrenched in violation of the provisions of Section 25-F of the Industrial Disputes Act.

The petitioners stated that the workman was appointed at “Nana Project” and on completion of this Project, his services were not required, therefore, he was discontinued from service. Thus, no case for compliance of the provisions of Section 25-F of the Industrial Disputes Act is made out because services of the workman were retrenched upon completion of project.

It is submitted by the learned counsel for

the respondent-workman that similar writ petition being SB Civil Writ Petition No.516/1995 was filed before this Court by the employer against workman-Babulal against the award passed by learned Labour Court, which was decided by this Court vide order dated 15.1.2007 whereby the learned Single Judge of this Court while dismissing the writ petition upheld the award passed by learned Labour Court.

I have perused the aforesaid judgment dated 15.1.2007 passed in SB Civil Writ Petition No.516/1995 wherein it has been held that :

> "From reading of the award impugned it is apparent that even according to Sh. N.S. Kawadia, a departmental witness, the workman remained in service of the petitioner from the month of February 1987 to September 1988. It also appears that though the term 'project' is used by the respondents but as a matter of fact no where it is made clear that what was an independent project with the petitioner department except regular survey work. The labour court after considering all the facts and evidence available on record reached at the conclusion that the respondent-workman was employed in the petitioner department as a workman and was retrenched without following mandatory condition precedent to do so. It may be true that the petitioner would have employed the workman during some survey but such survey work cannot be treated as an independent project. It is a routine work of the Department of Mines and Geology, and therefore, a person employed for such survey is required to be treated

as an employee in the Department of Mines and Geology.

A statutory obligation was to be discharged by the petitioner to adhere the provisions of Section 25-F of the Act of 1947 before discontinuing the respondent-workman from service and being failed to do so, the labour court rightly reached at the conclusion that the retrenchment of the workman was effected illegally.

In totality of the facts and circumstances of the case no interference of this Court under Article 226 and 227 of the Constitution of India is warranted. The writ petition is accordingly dismissed."

In this view of the matter, in the present case, it is clear from the award that the learned Judge, Industrial Disputes Tribunal & Labour Court, Jodhpur after considering entire facts of the case gave finding that workman had completed 332 days in a preceding calendar year, therefore, at the time of terminating his services, the provisions of Section 25-F of the Industrial Disputes Act were required to be complied with but the same have not been complied with.

In this view of the matter, I see no reason to interfere with the impugned award dated 22.9.1994 passed by Judge, Industrial Dispute Tribunal & Labour Court, Jodhpur under Article 227 of the Constitution of India because this award has been challenged by the

petitioner-Department on the basis of facts of the case whereas the learned Judge, Industrial Disputes Tribunal & Labour Court has rightly appreciated the facts of the case. There is no perversity or illegality in the finding recorded by Labour Court. Therefore, no interference is required by this court.

Hence, the writ petition is dismissed.

(GOPAL KRISHAN VYAS), J.

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